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| EXAMINER |
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HAUPT, KRISTY A

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09/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/584,104 | Applicant(s) ERLANDSSON ET AL. | |
| | Examiner KRISTY A. HAAPT | Art Unit 2876 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/22/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to Application 10/584,104. Claims 1-12 are pending with claim 1 in independent form.

Priority

This Application is a National Stage Application of PCT/IB04/52828 filed 12/16/04, which claims priority to foreign application EPO 03258180.3 filed 12/23/03.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Knepler US 2003/012986 A1 (as cited by Applicant).

Knepler teaches:

With respect to claim 1, a system for preparing a consumable matter, comprising:

- An apparatus for preparing the consumable matter (Figure 4 teaches a beverage preparation system, 10)

- A container for containing a basis material for the consumable matter during storage (Page 6, Paragraphs 0065 and 0069 teaches an individual pack of pre-ground coffee or brewing substance)
- Characterized in that the container comprises an identifier (Page 6, Paragraphs 0067 and 0069 teaches a storage device, 20, attached to individual packages of pre-ground coffee (Page 6, Paragraph 0065)) provided with data and the apparatus comprises a reader for reading the data in said identifier (Figure 4 teaches beverage preparation system, 10, has included therein a communication device, 28 that can be a chip reader, magnetic strip reader or similar (See Page 6, Paragraph 0068) to read the data off the individual package (Page 6, Paragraphs 0067 and 0069)), and a controller for controlling a preparation process during operation of the apparatus based on the data (Page 4, Paragraph 0049 and Abstract)

With respect to claim 2 and incorporating all limitations of claim 1, wherein the system is a system for preparing a beverage from a beverage base material, comprising:

- An apparatus for preparing a beverage extract from a beverage base material and a liquid (Figure 4 teaches a beverage preparation system, 10 and Page 3, Paragraphs 0043-0044)

- A container for containing the beverage base material during storage (Page 6, Paragraphs 0065 and 0069 teaches an individual pack of pre-ground coffee or brewing substance), and wherein the container comprises an identifier provided with data (Page 6, Paragraphs 0067 and 0069 teaches a storage device, 20, attached to individual packages of pre-ground coffee (Page 6, Paragraph 0065)) and the apparatus comprises a reader for reading the data in said identifier (Figure 4 teaches beverage preparation system, 10, has included therein a communication device, 28 that can be a chip reader, magnetic strip reader or similar (See Page 6, Paragraph 0068) to read the data off the individual package (Page 6, Paragraphs 0067 and 0069)) and a controller for controlling a beverage brewing process in dependence on the data during operation of the apparatus (Page 4, Paragraph 0049 and Abstract)

With respect to claim 3 and incorporating all limitations of claim 2:

- The data comprise information identifying the type of beverage base material present in the container (Page 5, Paragraph 0057)

With respect to claim 5 and incorporating all limitations of claim 1:

- The identifier comprises an identifier chosen from a group of radio frequency transponders and bar codes and the reader comprises a reader

chosen from a group of radio frequency readers and bar code readers
(Page 6, Paragraph 0069)

With respect to claim 6 and incorporating all limitations of claim 2:

- Said controller comprises a processing unit which comprises a plurality of pre-programmed brewing process parameters, from which a selection is made during operation in dependence on the data as read (Page 6, Paragraphs 0072-0073 teaches a memory device coupled to the controller contains stores the beverage preparation parameters, etc. where a code located on a card can be read with an optical character reader wherein the parameters stored in memory are accessed by entry of the code)

With respect to claim 7 and incorporating all limitations of claim 1:

- The identifier comprises an element which is detachably connected to the container (Page 6, Paragraph 0065 teaches a card containing storage device is packaged with the brewing substance and Page 6, Paragraph 0069 teaches a magnetic strip on package which is cut off by a sharp surface to open the package)

With respect to claim 8 and incorporating all limitations of claim 7:

- The element comprises one from among a group of tags comprising tags with dielectric values, tags with punched holes, and tags with resistance

values and the reader comprises one of a group of readers comprising capacitor arrangements for receiving dielectric tags, optical and mechanical readers and resistance measuring arrangements (Pages 1-2, Paragraph 0047)

With respect to claim 9 and incorporating all limitations of claim 1:

- The container comprises an identifier provided with data (Page 6, Paragraphs 0067 and 0069 teaches a storage device, 20, attached to individual packages of pre-ground coffee (Page 6, Paragraph 0065)), said data being readable by a reader in an apparatus for preparing a beverage (Figure 4 teaches beverage preparation system, 10, has included therein a communication device, 28 that can be a chip reader, magnetic strip reader or similar (See Page 6, Paragraph 0068) to read the data off the individual package (Page 6, Paragraphs 0067 and 0069)), the beverage brewing process being controlled in dependence on the data during operation of the apparatus (Page 4, Paragraph 0049 and Abstract)

With respect to claim 10 and incorporating all limitations of claim 1:

- Said apparatus comprises a reader for reading data in an identifier (Figure 4 teaches beverage preparation system, 10, has included therein a communication device, 28 that can be a chip reader, magnetic strip reader or similar (See Page 6, Paragraph 0068) which is present in a container

for containing a beverage base material (Page 6, Paragraphs 0067 and 0069 teaches a storage device, 20, attached to individual packages of pre-ground coffee (Page 6, Paragraph 0065)) and a controller for controlling the beverage brewing process in dependence on the data during operation of the apparatus (Page 4, Paragraph 0049 and Abstract)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knepler US 2003/012986 A in view of Thomas et al. US 7,032,818 B2.

The teachings of Knepler have been discussed above.

Knepler additionally teaches:

With respect to claim 11 and incorporating all limitations of claim 1:

- Said identifier is provided with data which are readable by a reader in an apparatus for preparing a consumable matter, and a preparation process during operation of the apparatus being controlled based on said data (Page 4, Paragraph 0053)

With respect to claim 12 and incorporating all limitations of claim 1:

- Said identifier is provided with data which are readable by a reader in an apparatus for preparing a beverage, the beverage brewing process being controlled in dependence on said data during operation of the apparatus (Page 4, Paragraph 0053)

Knepler fails to explicitly teach:

With respect to claim 4:

- The data comprise information identifying a storage life of the beverage base material

With respect to claims 11 and 12:

- Said identifier comprises a separate element for inclusion in a container containing a beverage base material during storage

However, Thomas teaches:

With respect to claim 4 and incorporating all limitations of claim 2:

- The data comprise information identifying a storage life of the beverage base material (Column 9, Lines 62-65 teaches an expiration date stored on RFID tag)

With respect to claims 11 and 12:

- Said identifier comprises a separate element for inclusion in a container containing a beverage base material during storage (Column 9, Lines 49-57)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Knepler to include an expiration date with the data, as taught by Thomas, to prevent products that have expired

from being dispensed to a consumer, thereby decreasing the risk of dispensing contaminated and/or insufficient quality beverages (Column 3, Lines 42-50).

Examiner's Note

The Examiner has cited particular column and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the Applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the Prior Art or disclosed by the Examiner.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTY A. HAUPT whose telephone number is (571)272-8545. The examiner can normally be reached on M-F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2876

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristy A Haupt/
Examiner, Art Unit 2876

/Michael G Lee/
Supervisory Patent Examiner, Art Unit 2876